



Planning Board
Bruce Andersen, Chairman
Brian Hines, Vice Chairman
Addison Causey
Nancy Clarke
Leonard Cook
Barry Hester
Jo Anne Miller
Sam Mount
Jeff Neely
Randy Poindexter
Joe Sailors

The Regular Meeting of the Planning Board was held at the Huntersville Town Hall at 7:00 p.m. on December 16, 2008.

Call to Order

The Chairman called the meeting to order at 7:04 p.m.

Board Member Attendance

Chairman Bruce Andersen, Vice Chairman Brian Hines, Addison Causey, Leonard Cook, Barry Hester, Jo Anne Miller, Sam Mount, Jeff Neely, Randy Poindexter, and Joe Sailors. The following member was absent: Nancy Clarke.

Planning Staff Attendance

Jack Simoneau, Planning Director, Bill Coxe, Transportation Planner, David Peete, Principal Planner, Whitney Hodges, Senior Planner, Bradley Priest, Senior Planner, Lisa McCarter, Planner I, and Michelle Haines, Secretary.

Consent Agenda

Addison Causey made a **Motion to Approve** the Minutes of the November 18, 2008 Regular Planning Board Meeting. Jeff Neely seconded the **Motion**. Brian Hines and Sam Mount abstained from the vote, which were considered affirmative votes. The vote was unanimous.

Action Agenda

Item 1. Lisa McCarter, Planner I, presented Petition TA08-13, which is a request by the Town of Huntersville to amend Articles 9.11 and 12.2.1 of the Zoning Ordinance regarding child day care homes. Staff explained the inconsistency in the current Zoning Ordinance for the number of children and identified the correct name of the agency with the State that regulates day cares. A copy of the Staff Report is attached hereto as Exhibit "A", and incorporated herein by reference. Staff recommends approval of the request.

Sam Mount made a **Motion to Approve** the request as being consistent with the Town of Huntersville Community Plan and other applicable long range plans, and being reasonable and in the public interest. JoAnne Miller seconded the Motion. The vote was unanimous.

Item 2. David Peete, Principal Planner presented Petition TA08-15, which is a request by Beatties Ford Memorial Gardens, Inc. to amend Article 7 of the Zoning Ordinance to add an Article 7.1(f) to reduce required tree-save percentage for non-residential uses in the Rural District from 50% to 30%. Staff explained that the current regulation is difficult to comply with

for commercial (non-residential) uses in the Rural District. A copy of the Staff report is attached hereto as Exhibit “B”, and incorporated herein by reference. Staff recommends the amendment.

Randy Poindexter stated that he is not opposed to cemeteries having a reduced tree save percentage, but other classifications of non-residential uses as listed in the Staff Report may not be appropriate. He asked if the reduction could be case specific. Staff responded that the other uses such as schools, government buildings, duplexes, parks, etc. were just as appropriate, and therefore were included. Randy Poindexter was concerned specifically about government building and duplexes being included, and that he is opposed to 30% across the board.

Ryan Rich, Esquire with the Law Firm of Hunton & Williams appeared before the Board on behalf of Beatties Ford Memorial Gardens. He stated that the application was based on the need for expansion of a new cemetery area. He described a scenario of cemetery property containing thirty (30) wooded acres and with the 50% tree save one half (1/2) of which would have to be saved according the Zoning Ordinance. He proffered that the Town could look at other ways to preserve trees in the rural zones, but this requirement is burdensome on cemeteries that need open space.

JoAnne Miller stated that in her opinion, trees and cemeteries are not compatible; that some trees are nice to have in cemeteries, but the need for open space is of higher concern. She further stated that she believes 30% is too high for a cemetery.

Jeff Neely disagreed with Randy Poindexter, and further stated that while parks are naturally thought of with many trees the modern park needs a lot of space for baseball fields, soccer fields, tennis courts and other uses that would conflict with the 50% requirement. Jeff Neely also stated that the need for new government buildings and the cost of land to the tax payers make the 50% requirement too high.

Joe Sailers made a **Motion to Approve** the Text Amendment with the deletion of duplexes. Jeff Neely seconded the Motion. The Motion passed 9-1 with Randy Poindexter opposing. STAFF CLARIFICATION – the amendment, as written, was for non-residential uses. Therefore, duplexes would not fall under this category and are not affected.

Item 3. Jack Simoneau, Planning Director presented the Davidson-Concord/NC 73 Small Area Plan (the “Plan”). He updated the Board members with the current changes to the Plan, along with correspondences received from the developer and property owners (Mayes). Changes mentioned at the Town Board meeting were:

1. Expansion of the node area boundaries south per the request by the Glenwood Properties and the Mayes Family (map showed the new proposed boundaries);
2. The buffer along NC 73 is already provided for to accommodate the future right-of-way;
3. Clearly indicate buildings have the option to be 2-4 stories in height and that not be a requirement; and
4. Open space noted in the Plan should be consistent with the current town standards.

JoAnne Miller's concerns with the Town's buffer and the Town of Davidson's seventy-five foot (75') buffer requirement were addressed. Staff advised that the Code requires a fifteen foot (15') build to line from the future thoroughfare, and along major thoroughfares an additional 10' landscape easement is required to accommodate a second row of street trees. JoAnne Miller expressed concern that when the widening of NC73 took place the landscaping easements would be disturbed and the buffers reduced. Staff stated that the buffer along NC73 will be preserved and not affected as Glenwood Properties had already planned for a 140' right-of-way (versus the normal 100' right-of-way).

Glenwood Properties and the Mayes family represented to Staff that they were concerned with the Area Plan giving the impression that you needed 2-4 story buildings in the commercial node area. The Ordinance does not mandate, and therefore it is an option. Staff does not have an issue with the option to have 2-4 story buildings.

Staff advised the Board members that the Town Board voted to "accept" the Area Plan at their meeting on December 15, 2008. This has significant implications because "accepting" an Area Plan, in essence, is not an official document that we have to measure rezoning requests. Statutes provide that when we have an "adopted" plan you have to determine whether that amendment request is consistent with the adoptive plan. By calling it accepted, the consistency statement no longer applies. Staff recommended to the Town Board and to the Planning Board that the Area Plan be "adopted". Staff further advised that the Town Board said that if the Planning Board wants to make any adjustments to the Area Plan the Town Board would entertain those recommendations. Staff asked if there were any other adjustments to be a part of the *accepted* plan or at some time a part of the *adopted* plan.

Bruce Andersen addressed the comment from the Town Board concerning the Open Space. Jack Simoneau indicated the draft plan said in general 40% of each "development node" would be in open space and the Town Board was aware that was inconsistent with our code Staff agrees that language needs to be changed so it is consistent with our current zoning ordinance regulations.

Bruce Andersen questioned the status of NCDOT. Staff explained that NCDOT has accepted the quadrant left as a solution to the traffic concern. The conditional rezoning request from Glenwood Properties provides details on the quadrant road design and NCDOT is reviewing that information.

When asked why the Board accepted the plan instead of adopting it, the Planning Director stated that Board Members were concerned an adopted plan is official town policy and that plan might be looked at as law. Also, as Town Boards change, there was concern the adopted plan may not reflect the position of that Board. The state statutes and local ordinances are very clear that in making a consistency statement you are in no way held to say that you have to deny a proposal that is held inconsistent with an adopted plan. The state statutes acknowledge that adopted Land Use Plans are important, and when deciding a rezoning or text amendment communities "shall" do a consistency statement. It further provides the consistency statement is not subject to judicial review, and you can not have your case challenge if the development proposal is inconsistent with the adopted plan.

The American Planning Association handout staff provided last week highlighted the problem that plans can get out of date once adopted. Hopefully our area plans reflect the wants and needs of the community to the greatest extent possible. Area plans are used by Staff to make decisions for capital facility spending, and in this case it will be used to push forward the thoroughfare plans and alignment.

There was a discussion about the Glenwood developer and one major adjacent property owner (Mayes family) and the alignment envisioned in the Area Plan. Staff stated that Davidson and Huntersville are dealing with this area together and have involved both the developer and the Mayes family. The Mayes family owns property on both sides of NC73, and they are looking to develop in a similar fashion. Additionally, the road alignment is a major component of the Area Plan, and the two (2) towns are working together. Furthermore, Staff does not see where Davidson will get 40% Open Space in their Town Center area when all planning is complete in the node on the north side of NC73.

Gina Mayes Harris (13422 Scanlan Way, Davidson) spoke to the Board and stated that they have approximately 80 acres on the north side which has been rezoned through the Town of Davidson. The Central Business District area (in red on the map) is less than 5% Open Space and feathers out. She stated that as a whole the area may not equal 40% Open Space.

Bruce Andersen asked if Plans could be identified and if it could be estimated how many Area Plans need to be reviewed. The Planning Director stated that since 2003 there have been eight (8) area plans prepared including the Huntersville Community Plan. Most are fairly new with the oldest being the Downtown Plan and Rich Hatchet Community Plan that was approved in approximately 1998. Jeff Neely questioned that if a plan is adopted versus accepted does *adopted* get more attention for updates. Staff has no experience with communities accepting plans. Mr. Simoneau indicated on the coast, state statues require long range adopted land use plans be updated every five years.

Joe Sailers made a **Motion to Recommend Adoption** and Sam Mount seconded the Motion. The Motion passed 8-2 with Brian Hines and JoAnne Miller opposing.

Item 4. Jack Simoneau, Planning Director presented the Prosperity Church Road Thoroughfare Amendment. A map was shown to the Board with the road indicated (in black) and the proposed alignment (in red), which runs along the Glenwood property line and adjacent to the Mayes property. It does not preclude the Mayes from having access. There is an email from the Mayes family that indicates they are looking for an adjustment in the alignment further to south so as to not divide their property. Staff indicated that in terms of physical lay of the land this alignment may be the best scenario. The next step of the process after recommendation from the Planning Board is the MUMPO review.

Bill Coxe, Transportation Planner addressed the Board and indicated that a Thoroughfare Plan Amendment is identified as being needed through some process. In the case of the NW Huntersville study, the NC73 Corridor Study identified the intersection of Vance Road and NC73 as an intersection worthy of further study. The Beatties Ford Road Small Area Plan

identified options and the request was taken to MUMPO to conduct public review and involvement. This process at hand does not follow that process. This process came through a Small Area Plan development process which is now not an adopted plan; and therefore has no adopted public policy statement that says the thoroughfare alignment should be moved. The Developer has taken in good faith the recommendations of the Small Area Plan and has produced an alignment, the majority of which lies within his property. The Town Board then directed us to take that alignment through a public hearing process. At the beginning of that process Zachary Gordon, Principal Planner told the Town Board that the normal path at the close of the public hearing be the matter forwarded to MUMPO for technical review and comment.

At the public hearing the issue was raised about homes on Ramah Church Road that may be affected by the alignment. Bill Coxe stated that the alignment may affect a barn on the southern portion below the Area Plan, and the alignment passes in front of a home. JoAnne Miller raised the issue with the impact on the Ramah Presbyterian Church cemetery. Staff stated that the alignment does go through land owned by the Presbyterian Church. The alignment is on the eastern side of the cemetery property across the street from the Church. It does not run through any gravesites, but does take some of the land and prevents them from expanding in that area. The Public Hearing was only held on the alignment in or near the Small Area Plan. These were additional issues that came about because of the hearing and public process. Bill Coxe recommended this matter be referred to the MUMPO staff for their review and comment.

The other issue that needs technical review is a modified crossing at NC73, which creates a better intersection. However, in changing the angle of crossing you must receive that angle on the north side of the intersection, so there is a modification necessary in the alignment, which was represented at the Public Hearing. It is not known if any engineering has been performed on that, and would need to be done for this to be fully valid. Staff stated that MUMPO will look at functionality of alignment. Staff recommended that the proposed realignment be referred to MUMPO for technical review and comment. Bruce Andersen asked if Staff would recommend that the referral include a future adjustment, if necessary, for the southern end of the proposed realignment. Staff indicated that MUMPO is aware of the issues.

Joe Sailors made a **Motion to Refer** the alignment to MUMPO with a request for technical review and comment with the understanding that the southern end of the proposed realignment may need to shift to deal with issues identified south of this location. Sam Mount seconded the Motion.

Brian Hines asked how the MUMPO review affects the rezoning and sketch plan that have been before the Board. David Peete, Principal Planner stated that if the Town approves a rezoning that it would be conditioned upon the change in the alignment that the Area Plan calls for, or that the Town would like to see.

Bill Coxe further stated that MUMPO will accept recommendations in the process and they ultimately decide the alignment of thoroughfares. A Town can adopt a development proposal that is in conflict with an approved thoroughfare alignment. However, if there are Federal and State funds involved the MUMPO could withhold authority to use such funding on a

project that did not follow their alignment. Staff further stated that he was not offering value judgment on the alignment that has been submitted, but it seems to have merit.

JoAnne Miller asked Staff if engineers would be studying the creek at this point, and Staff did not have an answer. It is known that there are conservation easements on the creek, one of which is held by the NC Clean Water Trust Fund at the Ramah Church Road.

Mike Schutrum with Glenwood Development (Glenwood) approached the Board and said that it was his understand this would go to the TCC (Technical Coordinating Committee), and that the Planning Board is being asked to approve the alignment. Glenwood suggested that the approved alignment be taken to MUMPO. Bill Coxe stated that he is not recommending that this Board consider it as an approved alignment. Sam Mount clarified the process with Mike Schutrum. Mr. Schutrum's understanding of the process is that the alignment is taken to MUMPO when the Town Board (maybe Planning Board) approves the alignment for their review. Bruce Andersen clarified with Mr. Schutrum that it is the recommendation that MUMPO do the staff analysis. Mike Schutrum stated that they have supplied MUMPO with their site plan (vertical and horizontal profile) for review.

David W. Nayler, PE, with Nayler Transportation Engineering spoke to the Board on behalf of their work with Glenwood Development and this project. He stated that he did not feel that there would be a quick turn around from MUMPO to get a recommendation; it could be months before a review. According to Mr. Nayler, Bob Cook indicated they did not have the time to fully analyze this either, and that it could be six (6) months before having a recommendation. It is Mr. Nayler's understandings that Bob Cook is looking for a direction from the Town indicating that the alignment is feasible, and works with the development. He further stated that Dick Brolin has much time in the alignment which has been submitted to the Town and the alignments will work with the existing conditions at NC73 and Davidson-Concord Road. When dealing with the corner area and property boundaries, they can do the realignment after the fact. Bill Coxe agreed that thoroughfare alignments can be moved over time, even several times. MUMPO has given the TCC the latitude on a technical level to authorize the movement of a thoroughfare alignment as long as it enters and exits the affected landowner's property at the same location and angle; and as long as the movement did not get any closer than "x" amount of feet of a neighbor. What has been requested by the Mayes, you would move the alignment to the south to be along their property boundary and then re-enter the alignment.

Bruce Andersen asked Mike Schutrum about the intersection of the creek at the corner of Glenwood's property in the lower southern section, and if the road could move to the west to better turn at a 90 degree angle across the creek. Dick Brolin with Piedmont Design responded, and identified the SWIM buffer along the creek, and the crossing over the creek is the only location along the Mayes southern boundary line to cross the creek at a 90 degree angle, or close to it. There are approximately 280' of stream disturbance in the grading plan for that crossing. The MUMPO crossing further into Mayes property across the stream with an acute angle is disturbing the stream of approximately 500'. Mr. Brolin's evaluation of the streams down through the southern portion of the project all the way to the Mayes' property appears the best opportunity to cross with the least stream disturbance. The curve is one potential of the alignment tying into the existing MUMPO alignment. It was stated they feel confident with the

alignment to cemetery and it provided flexibility in the future for the Mayes property, farmhouse cluster lots and the Church to the south. Jack Simoneau clarified that it is a minor subdivision not a farmhouse cluster. Dick Brolin again stated that they were confident for this alignment to be pushed to the next level, which is MUMPO involvement.

Gina Mayes Harris addressed the Board again, and stated that Mr. Brolin was contradictory as he stated the design was off of the Mayes property, which is on the Mayes property. Also, she indicated that the Mayes family was not a part of the meeting with of Bob Cook. She stated that this is a huge issue and should not be done in haste without the detailed study. She stated that they are working with a developer that has tried to work with Glenwood, and they are not opposed to development and those who control land being able to stay within the zoning right of the municipality. They are opposed to anyone being able to take someone else's property that they do not control and tell the property owner what they are going to do with that property (i.e. the wedge at the entrance). Our attorneys and the developer that we are working with (Childress, Kline Properties) have never seen a development plan put forth when a main entrance is not controlled by the applicant, and now the exit as proposed. They feel they have been diplomatic with the Town Board, which has not worked.

Bill Coxe stated that the discussion that is being presented tonight is what normally happens through the public involvement process as to where the best alignment of the thoroughfare might be. With due respect to the Mayes family, the issue of whether or not a road crosses property and the owner does not want it to cross in that fashion is respected through the alignment decisions but not necessarily complied with in all cases. All options and input received are taken into consideration.

Gina Mayes Harris stated that at the wedge (the entrance) is the misunderstanding. It is not the road going through the wedge; it is the more western point where this developer needs frontage for his drug store sight which is needed for their development. It is not where the road is going to take over the property.

Bruce Andersen recited the Motion for clarity; to refer to MUMPO the proposed alignment by Glenwood Development and to examine in light of the comments by the other property owner (Mayes), and recognize that the alignment could be moved in the future. Bill Coxe stated that MUMPO will lock in the alignment, and it can be revisited. Perhaps an acknowledgment that there is a potential for change in the southern end of the alignment upon future study would be appropriate. The Motion passed 7-3 with JoAnne Miller, Randy Poindexter and Brian Hines opposing.

Commissioner Jeter asked the Chairman if the Planning Board was recommending this to go to MUMPO, and the response was that it is as the Staff's recommendation. Bill Coxe responded to Commissioner Jeter that it is to expedite the process. Bill Coxe indicated that he would report this to the Town Board at their next regular session, and if the Town Board should choose to modify the request to the MUMPO staff he would be happy to carry that forward.

Item 5. David Peete, Principal Planner, presented Petition #R08-06, which is a request by Glenwood Development Company to rezone 59.92-acres located along NC 73 (near Davidson-Concord Road) from R (Rural) to HC-CD (Highway Commercial – Conditional District). A copy of the Staff Report is attached hereto as Exhibit “C”, and incorporated herein by reference.

Staff reminded the Board that the rezoning and sketch plan will be before the Planning Board in January with all the details. The timeline of the pending matters was addressed with the Board; i.e. Small Area Plan, and the TIA which has been completed and reviewed by Town Staff and the applicant. The TIA report has been sent to NCDOT. The local NCDOT is generally okay with the findings of the TIA report, but have not heard from the Raleigh office. An updated report will be given to the Town Board on January 5, 2009. Staff further stated that the MUMPO process needs to be resolved, whether prior to or as a condition of the rezoning. Also the permitting of the 30% attached has been applied for by Glenwood. The Public Hearing for this matter is on January 5, 2009 and is before the Planning Board on January 27, 2009. The vesting period that has been requested by the applicant is an item that Staff does not recommend. The three waivers to consider are: 1) the shielding of mechanical equipment, which staff is comfortable with; and 2) Faux window treatments, which staff would recommend approval, and 3) the finished floor elevation of 36” above grade which staff does not recommend. The following is the timeline (in general):

- Text Amendment – Public Hearing on January 5, 2009
- Planning Board on January 27, 2009
- Sketch Plan - Planning Board on January 27, 2009
- Rezoning - Planning Board on January 27, 2009
- Potential for all 3 matters to go to the Town Board in February for final action.

Staff advised the Board that there is a 30 day deferral period and the next Planning Board meeting is 42 days due to the holidays. Therefore, staff suggested that a recommendation be made to the Town Board to remand this matter back to the Planning Board in January.

Joe Sailers made a **Motion** for the Town Board to remand this matter to the January 27, 2009 Planning Board Regular Meeting. Sam Mount suggested that the Motion be amended to include that the TIA be completed before the remand. Joe Sailers amended his Motion as such. Addison Causey seconded the Motion. Brian Hines made a Substitute Motion to not make a recommendation. The Motion did not receive a second, and failed. The vote on Joe Sailers’s Amended Motion was unanimous.

Sam Mount commented that the project(s) need to hold to a schedule, and Bruce Andersen wants Staff to expand on the 36” height Text Amendment waiver during the next meeting.

Item 6. Bradley Priest, Senior Planner presented Petition TA08-17, which is a request by Sherpa Land Co, LLC to amend section 3.2.7 and Article 9 of the Zoning Ordinance to allow climate controlled storage facilities with conditions in the Highway Commercial (HC) zoning district.

Staff advised the Board that the applicant requested withdrawal of the petition, and provided a copy of the electronic mail (e-mail) sent to staff to verify the request (see Exhibit "D"). Staff further advised that the Town Board must withdraw the petition based up the Planning Board's recommendation.

Brian Hines made a **Motion for Withdrawal** of the Petition by the Town Board as requested by the applicant. Joe Sailers seconded the Motion. The vote was unanimous.

Item 7. Bill Coxe, Transportation Planner, presented the Northwest Huntersville Thoroughfare item. Recent review of the Thoroughfare Options by Duke Energy representing the impact of McGuire Nuclear Station was introduced to the Board. Duke Energy is not recommending any specific Option, and advised Staff that with modifications they can live with any of the three (3) options presented. Their primary concerns are the ability of maintaining two (2) unencumbered access points to NC73 without median restrictions, no degradation of access to their sites on the north and south side of NC73, and that a median divided facility (NC73) in front of them when evacuating during an emergency may cause residents to go toward the nuclear plant instead of away. If Option 3 is to be pursued further, Staff strongly recommends that some mechanism be in place to severely restrict access to Option 3, if that Option is to be recommended. Staff advised the members that the Chairman and Leonard Cook have developed a Decision Matrix, which has been reviewed and weights assigned at the last meeting. Staff has evaluated each line item and assigned scores and scaling, and more evaluation and normalizing has taken place. Staff explained that the process which is being attempted to achieve is to come back to the Town Board with a recommendation on January 5, 2009. Their decision is expected to be made either that night or January 20, 2009, and then to MUMPO for their recommendation on January 21, 2009.

Staff stated that additional alignment work is necessary on Option 1 and Option 3 due to the conflicts with Transco underground gas pipeline, and some of the overhead utility line right-of-ways. The consultants working with the MUMPO staff have been advised of these issues. Bill Coxe gave the floor to the Chairman.

Bruce Andersen took the floor and reviewed the Decision Matrix with the other members. He identified all categories, corresponding weights, and scaling information. Discussion took place between the members concerning the issues of the scaling factors and the assignment of points whether assigned by staff, board members and/or the private sector. The concern of the funding of the Options was discussed. Bruce Andersen advised that new items were included in the matrix; item #15 for the affect on McGuire Nuclear Evacuation, and an item for the Impact of Construction on Mt. Island Lake. According to the ratings for the aesthetics, Option 3 received the worst rating with Option 1 to follow, and the best rating was Option 2. Bruce Andersen announced there were no paper copies of the matrix, but he would share the information with the Town Board and to include Walter Fields, and the Planning Department.

When reviewing the cost factors as scaled in the matrix only full implementation of Options 1 and 2 were used. The life of the study period was used and valued relative to what Staff believed was the value on a particular factor. Brian Hines questioned the Chairman

concerning the scaling of the Options for feasibility in comparison to each Option, and the financial factor for a developer's contributions to an Option. Leonard Cook responded that the concept of the scaling is based on the factors and not the Options. Bill Coxe responded that the points assigned for what the private sector has either offered to date, or what is anticipated they could offer toward offsetting the cost of a 34 to 38 Million dollar project is relatively insubstantial in all three Options, and therefore Staff assigned a 1 to be allocated to the private sector's contribution. Option 3 would have to include a right-of-way width greater than what the Town's Ordinance requires a private individual to dedicate. In Option 1 there is a minor amount of construction for a short section of a road and right-of-way that has been offered by a private sector. Brian Hines was concerned that Option 3 may make the JDH Capital property less viable which may bring in less private funds and may affect the scaling on the matrix; and that the funding in the Options is not equal. Bill Coxe stated that he did not do the cost estimates and that the range of the cost is still a fair comparison. Bruce Andersen stated that the goal was to maximize the benefits to the citizens of Huntersville, as well as Lincoln County.

Commissioner Jeter questioned the citizen input into the factoring into the matrix. Bill Coxe replied that the consensus of the citizens that did respond were in favor of Option 3. However, staff based their factoring on all citizens and not one group of citizens. Bruce Andersen responded that every number in the matrix is a variable based upon individual opinion, but that the numbers contained in the matrix are at least to some degree defensible.

According to the information applied through this detailed and in depth process, Bruce Andersen announced that Option 1 was identified as the best option for future success. However, Option 3 was identified as the preferred option at 99.7; Option 1 received 88, and Option 2 received 75.

Addison Causey asked the Chairman if this matrix has now evolved into a Staff Recommendation for a particular Option. Bruce Andersen responded that this is the first time Staff has seen the results and has not seen the scaling factors normalized. Brian Hines stated that previously he would have thought Option 3 was a good idea, but if Option 3 was chosen today based on the information presented and the grid-lock in this area, he felt that it creates a larger problem for a longer period of time along NC73 because of the lack of funding. Brian Hines prefers Option 1, and Option 3 is too long term.

Bill Coxe spoke to the Board on the request of the Chairman concerning the Options. Bill Coxe again identified the Options and stated that Option 2 may have elegance from a traffic stand point but did too much damage to the surroundings. Option 3 has the issue of the triple left turn which has been moved to the south, and is not a good fix and Staff continues to challenge the consultants to eliminate the triple left turn lanes. Any Options to the west of Vance Road will be dealing with a six (6) lane NC73 with medians, appropriate turn lanes, and access points. If a way could be found to legally prevent access to the new alignment from Vance past McGuire Nuclear entrance (with the exception of Hubbard Road access), so that the road looks and acts like a quasi freeway and expressway it would be ideal and probably allow the construction of a 4 lane versus a 6 lane road. Option 1 includes improvements at the intersection of Beatties Ford Road and Gilead Road (future Vance) and the JDH Capitol Rezoning Petition offers to reconstruct the intersection. Option 1 shows an intersection constructed on top of the Transco

Gas Pipeline, which is not allowed and would have to be moved. A similar problem exists with Option 3. Joe Sailors questioned the evacuation concerns of Duke Energy. With access significantly restricted, the old road bed would afford an evacuation route to those people residing on that road, and/or travel to the new roads to evacuate. It is Staff's personal belief that Options 1 and 2 with a reverse flow operation on NC 73 could improve evacuation.

Sam Mount asked if Option 1 could be built gradually from 2 lanes to 4 and then 6. Bill Coxe responded that the construction offered by JDH in Phase 1 is a 2 lane roadway with added turn lanes and widening on NC73. The roadway being constructed does not offer additional benefit for traffic westbound toward Lincoln County, but does for eastbound traffic coming into Mecklenburg County based on connection. Sam Mount stated that the developer has agreed to some funding of the roads on and off the site plan of JDH Capital. Also, Mr. Mount asked that when discussing Option 3 that if in fact it was a thoroughfare with limited access points, were impacts on developments west of Vance Road included in the matrix. Bill Coxe stated that it would be fair to say that development along NC73 (westerly) would be severely restricted, and there were no more details than that included in the matrix.

Brian Hines made a **Motion to Recommend Option 1**, and Sam Mount seconded the Motion.

JoAnne Miller stated that she personally favored Option 3, and that we do not know what can happen in the future; someone could build a good portion of it (the road). Sam Mount stated that there is a difference in Stumptown Road wherein developers previously set aside funds and Option 3 has a severe restriction that will preclude a developer addressing that. JoAnne Miller disagrees, because it may or may not have limited access. Bill Coxe stated that the points assigned to Option 3 assumed that it would be with limited access, and that otherwise Option 3 is only moving the conflicts south. Jeff Neely stated that he did not see Option 3 happening as quickly as needed. Addison Causey stated that Option 1 gave a better opportunity for the road to happen, somewhat incrementally, and to benefit from development more quickly.

The vote was a split decision of 5-5, with Randy Poindexter, JoAnne Miller, Bruce Andersen, Barry Hester and Lenny Cook opposing. All opposing recommended Option 3. Bruce Andersen asked if any member supported Option 2; there were none. After the failure of the first Motion to gain a majority, and at the request of Commissioner Jeter, the Planning Board considered a Motion to endorse Option 3. Leonard Cook made a **Motion to Recommend Option 3**, and JoAnne Miller seconded the Motion.

Leonard Cook stated that he felt that Option 3 was the best Option. Jeff Neely stated that he supports the process that took place through the matrix decision, but feels that Option 1 is the better choice. Bill Coxe stated to the Board that Staff has not had the opportunity to come together on the results of the decision matrix, and is reluctant to give a recommendation at this point. However, if you could deal with the access and intersection (NC 73/Vance Rd) issue in the long term, he would be in favor of Option 3. Mr. Coxe does want the opportunity to review the final decision matrix with staff involved, MUMPO, and individuals who have worked in the process. Jeff Neely stated that the two words used by Staff "*if*" and "*long term*" give him more reason to choose Option 1. That the problems in the area exist now; and *if* will not resolve them.

Leonard Cook stated that if the Town Board supports the recommendation it is possible that the road could be built sooner than later. Bruce Andersen stated that he raised his hand for Option 2 during the hearing to make a point, and that Option 1 does not solve the problems any better than the other Options. After the decision matrix he favors Option 3.

Commissioner Ron Julian commented from the audience and stated that a 5-5 decision is still a decision from the Planning Board. What he is looking for is a decision and recommendation based on the information at hand. Bruce Andersen asked Commissioner Julian if Staff reviews the results of the matrix would that be valuable to the Town Board to have a recommendation based on the matrix decision. Commissioner Jeter discussed the split vote with the two (2) options. He further replied that he recommends the Planning Board show what they approve. Bruce Andersen clarified that there are two Motions recommending Option 1 and Option 3.

The vote for Option 3 was taken. It was a split decision of 5-5, with Jeff Neely, Addison Causey, Brian Hines, Sam Mount, and Joe Sailors opposing. Therefore, Barry Hester, Randy Poindexter, JoAnne Miller, Bruce Andersen, and Lenny Cook were in favor of the Option.

Bill Coxe stated to the Board that regardless of the decision here, it is ultimately MUMPO's decision. When it is time for public funding, all reasonable and feasible considerations must be applied under the environmental laws prevailing at the time. Therefore, if Option 1 is viable it will be studied as well as Option 3. Additionally, MUMPO normally can not contradict the Town's opinion excepting in the case of a North Carolina route (i.e. NC 73).

Item 8. Whitney Hodges, Senior Planner presented the JDH Capital request for approval of a Tree Mitigation Plan in order to contribute funds to a Tree Fund/Bank for the ten (10) trees that they cannot save on the site at NC73 and Beatties Ford Road. Staff explained the contributions to the fund according to the Ordinance. Staff further stated that the Town Board recommended having the rezoning heard by the Planning Board on January 27, 2009, and brought to the Town Board on February 2, 2009. Staff stated that the tree mitigation plan is needed, and the fund contribution will be in the approximate amount of \$2,000.00 to \$3,000.00.

Bruce Andersen was concerned about the mitigation rules, and Staff responded that this would only be the second time used since the Ordinance was adopted. Bruce Andersen was concerned with the value of 2" caliber trees, and would like to adjust the values in the Ordinance to reflect a better balance. Addison Causey suggested that Staff take a look at the Ordinance and evaluate the calculations; that Staff bring the information back to the Board, and advise if it is currently valid.

Leonard Cook made a **Motion to Approve**. Sam Mount seconded the Motion. The vote was unanimous.

Item 9. Whitney Hodges, Senior Planner presented the JDH Capital request for a subdivision sketch plan approval of Shops at Crossroads Village. The subdivision sketch plan is a multi-

building site consisting of 8 lots and will contain a 120,000 square foot shopping center. Staff stated that the Town Board is not expecting the Planning Board to make a recommendation at this meeting. Staff recommended that the Planning Board make a Motion to Defer, or ask the Town Board to let the two matters be heard at the same time (R07-01 and Sketch Plan).

Sam Mount made a **Motion to Recommend** deferral to the Town Board suggesting it be sent back to the Planning Board for consideration on January 27, 2009 with the decision on R07-01. Joe Sailers seconded the Motion. The vote was unanimous.

Item 10. Bradley Priest, Senior Planner presented Petition R08-09, which is a request by Birkdale Inn, LLC to rezone 2 acres at 8521 Sam Furr Road from Neighborhood Residential to Highway Commercial Conditional District (HC-CD) for a 16 room inn/hotel located 440 feet west of Birkdale Commons Parkway. He advised the Board that the Rezoning plan has not changed since the last meeting. Transportation Staff raised the concern about the proposed driveway and proximity to existing driveways on NC73 (Sam Furr Road). Staff does not support the rezoning due to the unresolved driveway/transportation issue. However, Staff does support the Special Use Permit. Staff also advised that there is a tree mitigation issue for one (1) tree, which should be included in the Motion. The intent is to save the tree, but if it does not survive the process, the Board needs to approve the mitigation.

Jake Palillo of Birkdale Inn, LLC addressed Board and advised them on their findings from the last meeting when directed to find alternate access. Jonathan Guy, PE, AICP with Kimley-Horn & Associates, Inc. was retained to research the entrance. Jake Palillo stated that they have researched NCDOT road access and the Transportation Research Board Manual. As stated, the Manual was drafted as a reference and not to be used as policy or standards. Furthermore, there are no standards existing with the State that indicates a driveway has to exist 350' of another driveway as previously stated by Staff. He further advised that they have been able to talk to both authors of guidance Manual. One of the co-authors being Virgil Stover was also part of the NC73 Corridor Plan. Jonathan Guy engaged Vergil Stover to evaluate the proposed access given his knowledge of the site and the NC73 Corridor Plan, as well as the Manual. The volume of traffic used is 9% in the auxiliary lane past Birkdale Commons. Of the 112 vehicles in the outside through lane, 97 of them turned right into Sedgebrook. There were 15 vehicles that used the lane to go around traffic. This lane is acting as an auxiliary lane, but essentially it is a right turn lane for Sedgebrook, which is the same conclusion that Mr. Stover had based on the information and data he was supplied. The study was run on December 9, 2008, as the property being a hotel with 106 daily trips; none in the morning, and 32 in the PM peak hours (5:00 to 6:00 p.m.), which is very low. Jeff Neely questioned the day and hour of the study and that it was not conducted on a weekend for the shopping complex. Mr. Guy responded that AM and PM are the standard peaks, and Friday and Saturday is not a standard peak. He further stated that it would not make a difference in this location because the entrance is after Birkdale Commons with a concrete median that runs across this property frontage. If there is traffic coming to Birkdale it would be turning at the signalized intersection and would not impact this property. If the traffic is leaving Birkdale it will be in the other two through lanes, and not impact this property.

Bruce Andersen asked about the safety concerns. Mr. Guy responded that safety was discussed with Mr. Stover as well, and he recommended that it is an existing problem and additional enforcement would be good. Also, there is only one sign across the right turn lane/through lane/auxiliary lane that indicates this is a drop lane and Mr. Stover recommended that additional signage be placed along the frontage between Birkdale Commons and Lindholm Drive, which Jake Palillo is willing to do.

Bill Coxe addressed the Board about the Access Management Manual. The manual does not discuss operations out of an auxiliary lane. The Huntersville Zoning Ordinance indicates that each site's access request will be reviewed on a case-by-case basis, along with the Corridor Plan and most recent guideline recommendations from the Transportation Research Board. There is no one set of standards and/or guidelines. Based on the information provided, Staff concluded that the access was too close together to meet any of the guidelines. Staff would be glad to discuss the matter with Mr. Stover and Mr. Guy, but until that time Transportation Staff has not changed their recommendation.

Leonard Cook made a **Motion to Deny** the request as being inconsistent with the Town of Huntersville Community Plan and other long range plans. Furthermore, it is not in the interest of the public and the zoning map amendment would create transportation issues with the driveway, and it is not supported by Staff. Sam Mount seconded the Motion. The vote was a split decision with Bruce Andersen, Leonard Cook, Barry Hester, Jeff Neely, and Sam Mount in favor. Addison Causey, JoAnne Miller, Randy Poindexter, Brian Hines and Joe Sailers opposed the Motion to Deny.

Bruce Andersen stated that the Board likes the plan and wants to be supportive, but recognizes the driveway safety concerns brought forth by Staff.

Item 11. Bradley Priest, Senior Planner presented the Special Use Permit requested by Birkdale Inn, LLC to locate a 16 room inn/hotel less than 250 feet from a residential zoning district. Staff supports the request. A copy of the Staff Report is attached hereto as Exhibit "E" and incorporated herein by reference.

Joe Sailers made a **Motion to Approve** and the proposed tree mitigation plan conditioned on the approval by the Town Board on the rezoning application. Addison Causey seconded the Motion. The vote was 9-1 with Sam Mount opposing.

Item 12. Jack Simoneau, Planning Director presented Petition TA08-20, which is a request by the Town of Huntersville to amend Article 12.2.1 *General Definitions* of the Zoning Ordinance to add definitions for single-family, multi-family and deck, and modify bed and breakfast inn to specify "detached" single-family for clarification. This is a technical amendment, and is Staff recommended and supported. The Staff Report is attached hereto as Exhibit "F", and incorporated herein by reference.

Barry Hester questioned the definition of a “duplex”, to which Staff indicated that if it is a for sale unit it would be considered an attached home; if it is a duplex that is a rental unit it would be considered an apartment. Also, you could have a single-family attached, townhome, or condominium situation as a duplex.

Brian Hines made a **Motion to Approve** as being consistent with the Town of Huntersville Community Plan and other applicable long range plans. We recommend amending the Zoning Ordinance as it is reasonable and in the public interest, and staff supports the amendment. Jeff Neely seconded the Motion. The vote was unanimous.

Item 13. Jack Simoneau, Planning Director presented Petition TA08-16, which is a request by Town of Huntersville to remove farmhouse cluster subdivisions in Rural (R) and Transitional Residential (TR) zoning districts and removing references to farmhouse clusters in the Subdivision Ordinance, Section 3.2, 8.1.3 and Article 12 of the Zoning Ordinance and Section 2, 3 and 7 of the Subdivision Ordinance. The Staff Report is attached hereto as Exhibit “G”, and incorporated herein by reference.

Staff discussed the issue about an abbreviated process for a farmhouse cluster containing six (6) lots, or less, that are not along a Town or State road. Through electronic communication, Commissioner Jeter previously offered a recommendation to JoAnne Miller with three (3) conditions: 1) approved by Town Board through shortened review process; 2) build public road that meets Town standards; and 3) prohibit the use of gates.

Addison Causey questioned the history of the Town Board concerning the gated communities. The Planning Director advised that in 1995 it was decided that streets were public domain and the Town Board adopted a Community Plan wherein it indicates that streets should remain open for use by the public. This was codified in 1996. Currently a farmhouse cluster can use a gate since they have private streets.

Staff indicated to the Board that the Town Board is concerned with farmhouse clusters on private roads and the second or third generation of homeowner wanting the road(s) taken over or they have concerns with school transportation, trash pick up, etc. This is why the Town Board has asked that we consider removing the farmhouse cluster option in the Ordinance.

Bill Coxe advised the members that there are a scattering of subdivisions primarily in the western part of Northern Mecklenburg County, and at the time of development, the developer used the exemption in the Mecklenburg County Subdivision Ordinance that allowed 2 acre lots with 15’ exclusive easements to each lot, with a common roadway. Subsequently, property owners have petitioned the Town to upgrade the common roadway to Town standards. JoAnne Miller indicated that these are not farmhouse clusters, and Mr. Coxe replied that these are the predecessors of the farmhouse cluster.

Joe Sailers questioned what the lost to the Town for taking over a private road that is upgraded to the Town standards. Bruce Andersen added that it could be in the Code that in order to Petition the Town to take over a private road it (the road) would have to meet Town street

standards. Bruce Andersen indicated that he is not comfortable with eliminating farmhouse clusters in the Ordinance. He identified thirty (+/-) gated communities in the area from Mooresville to Weddington, all of which are extremely high priced communities. Mr. Andersen suggested that the prohibition of gated communities not be included in a recommendation.

The Planning Director suggested that if recommended that farmhouse clusters are allowed, then the streets are built to the Town standard in effect at that time, and to not prohibit the use of gates. Bruce Andersen suggested that Mr. Sailers recommendation be included in that if the property owners file a petition for the roads that the Ordinance requires the roads are built to current standards at the time of application. Addison Causey felt that there are plenty of good reasons to keep the farmhouse cluster section in the Ordinance. Bruce Andersen asked the members if they wanted to be out of the process for farmhouse cluster approval and for the Town Board to decide. Addison Causey replied that it should be a staff approval, as currently provided. JoAnne Miller indicated that a previous Town Board requested to be taken out of the approval process and have farmhouse clusters staff approved. The current Town Board can have approval decision if so desired.

Brian Hines made a recommendation that the Ordinance remain the same, with the inclusion that if a farmhouse cluster seeks its road(s) to become a public road, it would have to meet current Ordinance requirements that are in effect at the time of the request to turn the road over to the public. Additionally, that the current approval process remains in effect so that neither Planning Board nor Town Board is involved, and farmhouse clusters remain staff approved. Jeff Neely seconded the Motion. The vote was unanimous.

Item 14. Jack Simoneau, Planning Director discussed with the Board the possible Planning Board and Board of Commissioner schedule changes. He advised the members that commissioners are concerned with the amount of deferrals from the Planning Board. He advised that a meeting with Commissioners Jeter and Julian had taken place on the subject that produced a revised plan submission schedule. Bruce Andersen and Sam Mount representing the Planning Board also attended the meeting.

The Planning Director reviewed a proposed schedule (see attached Exhibit “H”). In the proposed schedule, the Planning Board would hear the case prior to a Public Hearing. There is a joint meeting with the Town Board after the Public Hearing being proposed in the new scheduled. This meeting would allow the town Board to hear details from the Planning Board about their decision. The Planning Director further advised the Board that this issue is not on the Agenda for the intention of a vote, but for awareness and discussion.

Sam Mount suggested that when a matter comes before this Board that it is the Planning Staff’s responsibility to have all information provided, including TIA so a recommendation can be made. The idea at the meeting was to come up with one process to go through with clear responsibility with each step along the way to move to the next step. There would be one opportunity for the Town Board to remand to the Planning Board on a limited scope for new information found from the Public Hearing.

Bruce Andersen clarified with Mr. Simoneau that when the Planning Board hears an item they have only one thirty day deferral. However, it should not be counted as a deferral if the information necessary to make a decision has not been provided at the time of the meeting. Bruce Andersen suggested an amendment that if a Motion to Defer is made that a matter shall be heard at the next scheduled meeting, no matter if that meeting is scheduled 30 days or more.

Generally, the Planning Board members did support a change in the schedule.

Adjournment

Randy Poindexter made the Motion to adjourn and Jeff Neely seconded the Motion. There being no further business the meeting was adjourned at 12:18 a.m.

Approved this 27th day of January 2009.

Bruce Andersen, *Chairman*

Michelle V. Haines, *Secretary*